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HOW TO CURB CRIME

The Bail Reform Act of 1966 required pre-trial release — without bail, or on unsecured bond — of persons charged with noncapital federal crimes, unless a federal judge has reason to believe the person would not return voluntarily for trial. The federal judge was not authorized to deny pre-trial release on the grounds that the defendant might pose a threat to the community if set free while awaiting trial.(1)

Law enforcement officers have called the Bail Reform Act a federal license to commit crime. There have been many instances of multiple crimes committed by a criminal out on pre-trial release, awaiting trial for a previous federal crime. By the time he is brought to trial for one crime, he may have been arrested (and released) for several others. Sometimes, if he is convicted for the first crime, charges for all the other crimes are dropped. If he is tried and convicted for all the crimes committed, he is usually given concurrent sentences — which means he serves them all at the same time, the effect being that he is punished for only one crime.

Eleven days after inauguration, President Nixon recommended legislation to amend the Bail Reform Act. He asked for preventive detention, until trial, of hardened criminals under indictment for violating federal law. The President said:

"Increasing numbers of crimes are being committed by persons already indicted for earlier crimes, but free on pre-trial release. Many are now being arrested two, three, even seven times for new offenses while awaiting trials. This requires that a new provision be made in the law, whereby dangerous hard-core recidivists could be held in temporary pre-trial detention when they have been charged with crimes and when their continued pre-trial release presents a clear danger to the community."(2)

Bills to amend the Bail Reform Act of 1966, as President Nixon requested, were introduced in Con-

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gress on July 11 and 14, 1969 (S 2600 in the Senate, HR 12806 in the House). Neither bill has been reported out of committee.

The man responsible for keeping preventive detention legislation in committee in the House is Emanuel Celler (New York Democrat). Celler, who calls this bill unconstitutional, had more to do with passing the unconstitutional Safe Streets and Crime Control Act (HR 17825 — federal aid to local law enforcement) than any other Member of the House.

In the Senate, the leading opponents of preventive detention are Edward M. Kennedy (Massachusetts Democrat) and Sam J. Ervin, Jr. (North Carolina Democrat). Kennedy is doing what he could be expected to do, but Ervin's stance is puzzling. Ervin is generally called the Senate's foremost authority on the Constitution. He voted for the Safe Streets and Crime Control Act of 1968, and presumably will vote for it again this year when the Senate takes floor action on it. He has never mentioned the fact that this bill is unconstitutional because the Constitution grants the federal government no power to subsidize local police. Yet, he finds preventive detention unconstitutional. Preventive detention — holding in jail until trial a person who has been arrested and indicted for a major federal crime — has been practiced since 1789. It does not violate any provision in the Constitution or in any of the amendments.

Senator Ervin says the Preventive Detention Bill requires that an accused be presumed guilty until proven innocent, a reversal of the ancient principle that an accused must be presumed innocent until proven guilty. Apparently, Senator Ervin has not read the legislation he condemns. Under the proposed bill, a federal judge, before ordering preventive detention of an arrested and indicted person, must hold hearings, giving the defendant opportunity to present information, to testify, and to cross-examine witnesses. Complete written records of all such hearings must be made. The defendant would have the right to appeal a judge's order for his detention pending trial.[2]

These are stronger safeguards against unwarranted detention of an indicted person than ever existed in federal law.

To illustrate the need for preventive detention legislation, Senator William B. Saxbe (Ohio Republican) cited the following District of Columbia case: On January 23, 1970, Franklin E. Moyler was arrested for armed robbery and given pretrial release. On June 1, 1970, he was arrested for another robbery, and released. On June 18, 1970, a police officer attempted to question Moyler as a suspect in still another robbery. Moyler shot and critically wounded the officer. After being shot, the officer shot and killed Moyler.[3]

Answering Senator Saxbe, Senator Ervin said that even if Moyler had been subjected to preventive detention (for the 60 days specified in the proposed legislation) following his January 23 arrest, he would have been out on June 18 when the shooting of the police officer occurred.[3] Again, it appears that Senator Ervin has not read the legislation he calls unconstitutional. The proposed law specifies that a defendant held in preventive detention must be tried within the period of his detention — unless he delays his own trial.[2]

On January 28, 1970, the Senate, by a roll-call vote of 82-0, passed the Controlled Dangerous Substance Act (S 3246 — Drug Control Act). President Nixon had requested this legislation.

Mainly, the act would revise penalty schedules under federal narcotics laws, providing that professional criminals trafficking in certain narcotics would be subject to sentence up to 12 years and a $25 thousand fine; providing that possession of certain narcotics by a first offender for his own use be treated as a misdemeanor, not a felony, and be punishable by imprisonment up to one year and a fine of $5000.

The most controversial part of the Drug Control Act is the "no-knock" provision — authorizing federal search warrants which allow officers to enter premises, without knocking, for seizure of

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property as evidence, provided the magistrate issuing the warrant be satisfied the evidence would be destroyed or life endangered if the officers knocked or otherwise gave notice before entering the premises.[4]

Senator Sam J. Ervin, Jr., led an unsuccessful fight against the no-knock provision, but voted for passage of the bill with the provision in it.

Congressman Celler has the Drug Control Act stopped in the House Judiciary Committee. Celler calls the no-knock provision unconstitutional, saying it violates the Fourth Amendment guarantee against unreasonable searches and seizures. Ultra-leftists who support Celler in opposing the no-knock provision of the Drug Control Act conjure up visions of police officers taking it upon themselves to break into the homes of innocent persons, in the middle of the night, without warning, and without cause.

The Fourth Amendment provides that "no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized." The no-knock provision complies with these strictures. Before a law officer can get a warrant to enter and search a premise for illegal drugs, he must describe the place to be searched, the property expected to be found and seized, and the persons expected to be found and arrested. He must, under oath, present sufficient information to convince a federal judge (or other warrant-issuing magistrate) that the search and seizure are necessary and proper. In the case of a no-knock warrant, the law officer must convince the magistrate that life would be endangered or evidence destroyed if the officer were required to give advance warning of intent to enter and search.

Moreover, the Drug Control Act would not apply to police generally. The Nixon administration wants the Act to become a model for state laws governing police work in dangerous-drug cases; but legally the law would apply only to federal officers, and to District of Columbia police (who are under federal jurisdiction).

On January 15, 1969, Senator John L. McClellan (Arkansas Democrat) introduced the Organized Crime Control Act (S 30), aimed at the organized criminal underworld. On April 23, 1969, President Nixon endorsed the bill and suggested other provisions to be added. The Senate incorporated many of the administration proposals and passed the Act, by a 73-1 roll-call vote, on January 23, 1970.

As passed by the Senate, the Organized Crime Control Act — among other things — broadens federal jurisdiction over syndicated gambling; makes bribing of local officials by underworld characters a federal crime; makes it a federal crime to use illegally-gotten income to acquire or establish a legitimate business; provides increased sentences for certain dangerous offenders; empowers federal grand juries to make public reports on misconduct of public officials, even in cases where the misconduct could not be prosecuted as a violation of law; overturns a portion of a 1969 Supreme Court decision (*Alderman and Alderisio v. U. S.*) which makes it almost impossible for the government to prosecute any individual involved in organized crime or in violation of internal security laws if electronics eavesdropping has been used in the investigation.[5]

Senator Lee Metcalf (Montana Democrat) cast the only vote against the Organized Crime Control Act when the Senate passed it on January 23, 1970. Metcalf said:

"I stand here . . . ready to vote for more judges, more policemen in the streets, more grants-in-aid to sheriffs and municipalities to help them train their police services. But I feel that this [S 30] will take away individual constitutional rights that will not contribute to the law enforcement that we seek."[6]

Here, again, is that strange partial blindness of liberalism. Senator Metcalf can see the un-

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constitutionality of provisions in the Organized Crime Control Act, which aim to give law officers more muscle in handling the worst kinds of criminals; but he cannot see the unconstitutionality of federal aid to local law enforcement.

I agree with Metcalf that some provisions of the Organized Crime Control Act are unconstitutional. It is well known that corruption of local officials by underworld figures is a main reason why organized crime flourishes. But the federal Congress has no authority to pass a law against something merely because it is heinous. The Congress must have *constitutional authority* to pass the law. The Constitution does not empower the federal Congress to punish the misbehavior of local officials. That is something that people in the locality or the state must find a way to handle. The same can be said for provisions in the Organized Crime Control Act which broaden federal jurisdiction over syndicated gambling and which establish federal jurisdiction to prohibit gangsters from acquiring legitimate businesses with illegally-obtained income. These are matters for local and state authorities to handle.

With regard to *all* of the crime-fighting proposals pending in the federal Congress (those supported by the President, as discussed in this *Report*, and many others), I am inclined to agree with Congressman John Rarick: We already have enough laws on the books. In fact, we have too many.

The Bail Reform Act of 1966 should not be amended as proposed — providing a welter of time-and-money consuming, court-clogging hearings and appeals for a person indicted for dangerous crime, before that person can be detained for trial. The Bail Reform Act of 1966 should be *repealed.* The money, time, and effort saved by repealing, instead of amending, the Act could be devoted to giving every defendant a speedy trial.

With one simple act (whose enforcement would save, rather than cost, taxpayers millions of dollars a year), Congress could enable existing law enforcement agencies to enforce existing laws; and that would be a powerful deterrent to crime. Congress should put into law a provision which George Mason, in 1789, wanted put into the original Bill of Rights: a provision denying federal courts jurisdiction in any cases except those involving admiralty, maritime, and purely federal matters — prohibiting federal courts from accepting, on appeal or otherwise, cases arising from state or local laws.

When federal courts are prevented from voiding state laws, and turning loose criminals arrested, tried, and convicted under state and local statutes — crime in the United States can be curbed.

FOOTNOTES

(1) *1966 Congressional Quarterly Almanac*, pp. 572 ff.

(2) *1969 Congressional Quarterly Almanac*, pp. 702-703

(3) *Congressional Quarterly Weekly Report*, June 26, 1970, p. 1632

(4) *Congressional Quarterly Weekly Report*, Jan. 30, 1970, pp. 259-260

(5) *Congressional Quarterly Weekly Report*, March 21, 1969, p. 412

(6) *Congressional Quarterly Weekly Report*, June 5, 1970, p. 1499

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